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Letter dated 21 December 2001 from the Chairman of the Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism addressed to the President of the Security Council

The Counter-Terrorism Committee has received the attached report from Austria, submitted pursuant to paragraph 6 of resolution 1373 (2001) (see annex).

I should be grateful if you would arrange for this letter and its annex to be circulated as a document of the Security Council.

(*Signed*) Jeremy **Greenstock**
Chairman
Counter-Terrorism Committee

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Annex

[Original: English]

Letter dated 20 December 2001 from the Chargé d'affaires a.i. of the Permanent Mission of Austria to the United Nations addressed to the Chairman of the Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism

I have the honour to submit the Austrian report to the Counter-Terrorism Committee pursuant to paragraph 6 of Security Council resolution 1373 (2001) (see enclosure).

(*Signed*) Michael **Schmidt**
Chargé d'affaires a.i.

Enclosure

Report by Austria to the Committee established under paragraph 6 of resolution 1373 (2001) adopted by the Security Council at its 4385th meeting, on 28 September 2001

United Nations Security Council Resolution 1373 calls upon all States to report within 90 days to the Committee established under the provisions of the Resolution on the steps taken to implement the Resolution. A joint report of the European Union of which Austria is a member State covering actions taken within the framework of the Treaty on the European Union and the Treaty establishing the European Community is submitted separately by the European Union (the EU report will be issued as S/2001/1295).

The present report, therefore, covers only actions taken or in place at the Austrian national level. It is set out according to the guidelines circulated by the Chairman of the Committee established under UNSCR 1373.

1 (a) What measures if any have been taken to prevent and suppress the financing of terrorist acts in addition to those listed in response to questions on 1 (b) to (d)?

The International Convention for the Suppression of the Financing of Terrorism has been signed by Austria on 24 September 2001 and is currently before the Austrian Parliament in accordance with the national ratification procedure.

1 (b) What are the offences and penalties in your country with respect to the activities listed in this sub-paragraph?

A. Financing of armed associations (Section 279 of the Penal Code). Penalty: Deprivation of liberty of up to 3 years.

B. Under certain circumstances the intentional financing of a specific terrorist act would be considered as an act of assistance (participation) to the terrorist act itself (Section 12 of the Penal Code in relation with the offence committed, e.g. murder, intentional endangering by explosives etc.). However, the terrorist act in question would at least have to be attempted in order to make the (financing) participant punishable (Sections 15 Paras. 1 and 2 of the Penal Code).
Penalty: Sanctions would depend on the specific offence committed and would range up to a deprivation of liberty of 10 to 20 years or life imprisonment, depending on the gravity of the offence (Section 12 of the Penal Code in relation with the relevant general offence committed; e.g. murder).

C. Under certain circumstances, the providing or collecting of money in order to finance the activities of a criminal organization would be considered as participation in the criminal organization as such. In this case, it is not necessary that a specific terrorist act has already been committed or attempted (Section 278a of the Penal Code).
Penalty: Deprivation of liberty of 6 months to 5 years.

D. Certain acts of handling assets when committed with the knowledge that the assets belong to a criminal organization would be considered as the laundering of assets that belong to a criminal organization as defined in Section 278a of the Penal Code (Section 278a Para. 2 of the Penal Code).
Penalty: Deprivation of liberty of up to 5 years (Section 278a Para. 2 of the Penal Code).

1 (c) What legislation and procedures exist for freezing accounts and assets at banks and financial institutions?

As regards criminal procedure, with respect to proceeds suspected to have been obtained through or for the commitment of a criminal offence as well as assets within the disposition of a criminal organization as defined in Section 278a of the Penal Code, an injunction may be issued by the competent court (Section 144a of the Criminal Procedure Code in relation with Sections 20 and 20b of the Penal Code). In addition, the Banking Act provides in Section 41 for the temporary postponement of impending transactions. The Penal Code and the Code of Criminal Procedure contain also provisions regarding confiscation of assets and forfeiture.

Furthermore, Section 99 No. 17 of the Banking Act as well as Sections 23 and 24 of the Foreign Exchange Act stipulate that any disposition over frozen accounts contrary to directly applicable EC Regulations is an administrative or criminal offence (either according to the Banking Act or to the Foreign Exchange Act). This applies to all accounts frozen by EU Council Regulation No. 467/2001 (as amended four times), implementing UNSCR 1267 and 1333.

If there is no directly applicable EC Regulation (see in particular the EU Report) in place, Section 78 Para. 7 of the Banking Act stipulates that the Federal Government with the consent of the Main Committee of the National Council (first chamber of the Parliament) is empowered to prohibit by way of regulation the disposition over accounts held with credit institutions in Austria if such accounts

1. are the property of authorities or other state agencies of a particular state or of companies having their corporate seat in a particular state, or
2. are the property of companies governed by the authorities, agencies or companies named in No. 1 either financially or by the way of organization or are otherwise economically controlled by these companies.

In cases in which these conditions are disputed between the credit institutions and the owner of the account, the regulation may determine that proof of non-existence of these conditions must be furnished by the owner of the account as far as circumstances in his sphere are concerned and for this reason the credit institution cannot be expected to furnish the respective evidence.

1 (d) What measures exist to prohibit the activities listed in this sub-paragraph?

Due to the recent events, a special Task Force was formed in the Federal Ministry of the Interior which is dealing, jointly with EBT (squad combating terrorism) and EDOK (organized crime squad), with the necessary measures at the national level. Amongst other things, the EDOK Financial Intelligence Unit regularly organizes conferences for employees of credit and financial institutions on combating money laundering. One of these conferences also dealt with the phenomenon of the "Financing of Terrorism".

At present, also the implementation of the amended EC-money laundering directive is in preparation. Moreover, there are activities of the Federal Ministry of Finance and measures of the credit institutions to meet the objective of this requirement.

There has also been a Credit Summit of the Ministers of Finance, Interior and Justice together with the heads of the banking sector. The Minister of Finance has urged the credit institutions to continue and increase diligence on customers possibly related to terrorism. The summit agreed upon unanimous rejection of such business relationship. Determination for close co-operation with the authorities, especially with EDOK, was expressed. As a follow-up of the summit, the credit and insurance industry issued a declaration on solidarity against the abuse of the financial system for terrorist financing and on enhanced diligence. Credit and insurance institutions will in particular

- refuse business relationships in case of a suspicion even if they were not legally obliged to do so and

- report any kind of suspicion of a terrorist related financial activity to the competent authority.

This declaration is available on the Internet homepage of the Austrian Chamber of Commerce (wko.at/bsbv/terrorismus.htm).

All lists of accounts of possible terrorist-related entities (both of UN-SC-Resolutions as well as lists provided by the United States of America) have been transmitted to EDOK, the Austrian National Bank, credit institutions and the Austrian Chamber of Commerce. The lists have been made publicly available via the internet (there is a link from the homepage of the Federal Ministry of Finance to the US-Treasury's publication of the US-President's Executive order 13224 with the latest list of suspects annexed to it) and credit institutions will have to apply enhanced diligence according to Section 39 of the Banking Act.

2 (a) What legislation or other measures are in place to give effect to this sub-paragraph? In particular, what offences in your country prohibit (i) recruitment to terrorist groups and (ii) the supply of weapons to terrorists? What other measures help prevent such activities?

i. Recruitment:

As soon as three or more people conspire with the intent to continually committing criminal offences (criminal organization), this is considered to be a general risk, which law enforcement authorities pursuant to Section 21 of the Security Police Act have to eliminate.

a. The participation in a criminal organization as defined in Section 278a of the Penal Code constitutes a criminal offence.
Penalty: Deprivation of liberty of 6 months to 5 years (Section 278a of the Penal Code).

b. The recruitment of members for armed associations constitutes a criminal offence.
Penalty: Deprivation of liberty of up to 3 years (Section 279 of the Penal Code).

ii. Supply of weapons to terrorists:

Based on the Weapons Act access to arms is subject to thorough checks of the applicant. According to this law, illegal possession of firearms – dependent on the type of arm – is punishable by a court or an administrative authority.

In addition, the export of weapons is subject to export control under the Austrian Foreign Trade Act and the War Material Act. When issuing licences for exports of weapons to third countries Austria applies the common standards of the EU Code of Conduct on arms exports. According to criterion 7 of the EU Code of Conduct licences will be refused if there is the risk that the arms to be exported could be diverted to terrorist organizations.

As regards foreign trade with war material and procurement of war material, the War Material Act provides strict procedures with regard to granting permission. These procedures meet the criteria elaborated in the framework of the European Political Co-operation in view of a harmonisation of arms exports and adopted by the European Councils of Luxembourg (1991) and Lisbon (1992).

a. The supply of weapons to armed associations constitutes a criminal offence.
Penalty: Deprivation of liberty of up to 3 years (Section 279 of the Penal Code).

b. The acquisition, possession or transfer of weapons or ammunition in order to equip a considerable number of people for combat constitutes a criminal offence.
Penalty: Deprivation of liberty of up to 3 years (Section 280 of the Penal Code).

c. The import, export or transfer of war material through Austrian territory constitutes a criminal offence if necessary permissions have not been obtained or regulations prohibiting the export to certain countries have been violated. Even negligence would make the act punishable.
Penalty: Deprivation of liberty of up to 2 years or fine of up to 360 day fines (Section 7 of the War Material Act).

d. The possession of certain arms, weapons and ammunition constitutes a criminal offence. Even negligence would make the act punishable.
Penalty: Deprivation of liberty of up to 1 year or fine of up to 360 day fines (Section 50 Para. 1 of the Weapons Act).

As regards administrative measures, presently extended risk assessment carried out by law enforcement authorities is being discussed; this shall be included in an amendment to the Security Police Act. Moreover, increasing security checks at airports and background checks on staff having access to airplanes under the Civil Aviation Security Act is being considered.

2 (b) What other steps are being taken to prevent the commission of terrorist acts, and in particular, what early warning mechanisms exist to allow exchange of information with other states?

The international co-operation with intelligence services and law enforcement agencies as well as EUROPOL has been intensified. The exchange of information has been accelerated through an optimisation of the workflow and a much higher employment of resources. Austria organized a meeting of the Police Working Group on Terrorism (PWGT) on combating terrorism and participated in several other international meetings on this subject. Moreover, a representative of Austria takes part in the newly formed EUROPOL Task Force on Terrorism.

In addition, Austria participates actively in the EU fora and supports the extensive relevant EU initiatives and implements them in Austria (see also the EU Report).

2 (c) What legislation or procedures exist for denying safe haven to terrorists, such as laws for excluding or expelling the types of individuals referred to in this sub-paragraph?

On 9 October 2001, the Austrian Federal Ministry of the Interior gave instructions for compulsory consultation of the Ministry in case of visa and residence permit applications from 21 countries.

For nationals of these countries and for persons holding travel documents issued by these countries (stateless persons, refugees, others),

- all visas – airport transit visa A, transit visa B, visa C, residence visa D, and geographically restricted visa (VrG) – and
- all permits (permission to settle and residence permit), independent of the fact whether it is a first application or an application for renewal,

may only be granted after approval by the Federal Ministry of the Interior.
Provisions for excluding or expelling such persons are laid down in the Austrian Aliens Act (see annex).

2 (d) What legislation or procedures exist to prevent terrorists acting from your territory against other states or citizens?

Austria is actively taking part in the measures and efforts which are taking place at the EU level (see the EU Report).

2 (e) What steps have been taken to establish terrorist acts as serious criminal offences and to ensure that the punishment reflects the seriousness of such terrorist acts?

There is no general offence criminalizing terrorist acts as such. Specific terrorist acts are penalized in the same way as if they were committed without terrorist motivation, for instance as murder, endangering by explosives, hijacking of an aircraft etc.
Penalty: Sanctions depend on the specific offence committed and range up to a deprivation of liberty of 10 to 20 years or life imprisonment, depending on the gravity of the offence.

Planning of terrorist acts:
The conspiracy - with at least one other person - to commit a criminal act such as murder, kidnapping, hijacking of an aircraft or endangering by explosives constitutes a criminal offence, irrespective of the actual attempt or commitment of the specific (terrorist) act (Section 277 of the Penal Code).
Penalty: Deprivation of liberty of 6 months to 5 years.

In addition, due regard will be taken of the EU framework decision on a common definition of various types of terrorist offences and serious criminal sanctions as well as the introduction of a European arrest warrant.

2 (f) What procedures and mechanisms are in place to assist other states?

Austria is a party to all applicable multilateral European conventions on extradition and mutual assistance in criminal matters, either within the Council of Europe or within the European Union, including in particular the European Convention on Extradition and its Second Protocol, the European Convention on the Suppression of Terrorism, the European Convention on Mutual Assistance in Criminal Matters and its Protocol, as well as the extradition instruments so far developed within the European Union, and the Schengen Implementation Convention.

On the bilateral level Austria has concluded a number of treaties additional to the aforementioned European conventions on extradition and mutual assistance in criminal matters, as well as treaties on extradition and mutual assistance in criminal matters with Australia, Canada, the United States of America and Yugoslavia.

On the domestic level, the Act on Extradition and Mutual Assistance in Criminal Matters is the basis for proceedings in the respective areas. However, Section 1 of that act provides that it applies only in the absence of conflicting rules of applicable international treaty law.

All these procedures and mechanisms are functioning well and a great number of cases have been dealt with successfully in the past.

2 (g) How do border controls in your country prevent the movement of terrorists? How do your procedures for issuance of identity papers and travel documents support this? What measures exist to prevent their forgery etc?

As regards border control, on 9 October 2001, instruction was given that nationals of 21 countries and holders of travel documents issued by these countries (stateless persons, refugees, others) be thoroughly checked upon entry. As a consequence, their travel documents and visas shall be checked against the national wanted persons index as well as in the Schengen Information System. This applies also to nationals of third countries being related to EEA nationals.

In addition, instruction was given that border visas – which are issued only in exceptional cases stipulated by law (e.g. for humanitarian reasons) – be issued to such persons only after approval by the Federal Ministry of the Interior.

With regard to protection from counterfeiting ID and travel documents, Austria has already achieved a maximum of security as regards counterfeiting of ID cards. Presently, efforts are made to increase also the security standards for passports to such an extent; these measures shall be concluded within two years.

3 (a) What steps have been taken to intensify and accelerate the exchange of operational information in the areas indicated in this sub-paragraph?

Nationals of specified sensitive countries applying for visas, residence permits or unlimited permissions to settle in Austria will be screened regarding any information on them related to terrorism. Moreover, national and international search systems are increasingly used.

Efforts are made to identify and prevent possible illegal financing activities of terrorist organizations in Austria.

Protection of persons, objects and civil aviation facilities has been considerably extended after the attacks.

In Austria, co-operation with all bodies potentially affected by terrorist activities has been intensified, since the highest possible efficiency in combating terrorism can only be achieved through harmonised measures (see also response given in the EU Report).

3 (b) What steps have been taken to exchange information and co-operate in the areas indicated in this sub-paragraph?

See response given under 3 (a) above as well as in the EU Report.

3 (c) What steps have been taken to co-operate in the areas indicated in this sub-paragraph?

See response given under 3 (a) above as well as in the EU Report.

3 (d) What are your intentions regarding the signing and/or ratifying the conventions and protocols referred to in this sub-paragraph?

All regional and international conventions on terrorism have been ratified and implemented by Austria with the exception of the International Convention for the Suppression of the Financing of Terrorism which has been signed on 24 September 2001 and is currently before the Austrian Parliament in accordance with the national ratification procedure.

3 (e) Provide any relevant information on the implementation of the conventions, protocols and resolutions referred to in this sub-paragraph?

Implementation of a criminal sanction of terrorist financing, as far as this is not covered by present law, will be done in parallel with the ratification procedure concerning the International Convention for the Suppression of the Financing of Terrorism.

Close co-operation and exchange of information is performed by the financial intelligence unit EDOK.

In case of suspected insider trading by terrorists or terrorist related entities close co-operation and exchange of information with other security supervisors is also being performed by the Austrian Securities Authority (ASA) according to the provisions of the Securities Act.

3 (f) What legislation, procedures and mechanisms are in place for ensuring asylum seekers have not been involved in terrorist activity before granting refugee status?

Section 13 sub-section 1 of the Asylum Act stipulates that asylum shall not be granted if one of the conditions for exclusion determined in Art. 1 Chapter F of the Geneva Refugee Convention is met.

Sub-section 2 excludes asylum also if aliens constitute a danger to the security of the Republic for significant reasons or if they have been sentenced on the basis of a final conviction by an Austrian court for a very serious crime, and if they constitute a danger to the public because of this criminal act. A sentence by an Austrian court is to be deemed equal to a sentence by a foreign court meeting the requirements set forth in Section 73 of the Penal Code.

Section 14 sub-section 1 sub-paragraphs 4 and 5 of the Asylum Act stipulate analogously the loss of asylum if such circumstances occur afterwards.

The existence of such circumstances may be revealed during interviews in the asylum-related proceedings, or the fingerprinting of all asylum seekers pursuant to Section 35 of this act may identify an applicant as "terrorist".

No recent case of asylum seekers who can be qualified as terrorist is known to the Austrian authorities, and there is no case in which Section 13 of the Asylum Act had to be applied.

3 (g) What procedures are in place to prevent the abuse of refugee status by terrorists?

See the response given under 3 (f) above.

4 Close connection between international terrorism and transnational organized crime, illicit drugs, money laundering, illegal arms trafficking, and illegal movement of nuclear, chemical, biological and other potentially deadly materials; relevant additional information.

The terrorist attacks on 11 September 2001 have confirmed Austria's determination to implement as soon as possible the new international legal instruments on combating crime, in particular organized crime that in many cases constitutes the financial basis for terrorism. While preparations are under way to create national legislation in order to ratify the UN Convention against transnational organized crime, Austria has signed the Protocol against the illicit manufacturing of and trafficking in firearms, their parts and components and ammunition in November in the framework of the UN treaty event in New York.

Pursuing the fight against innovative forms of crime Austria has also signed the Council of Europe's Cybercrime Convention on 23 November 2001.

In addition, the inclusion of the fight against terrorism within the mandate of ODCCP is an important objective of Austria's foreign policy. To have international measures included in the Plans of Action to the Vienna Declaration, promulgated at the 10th UN Congress for Crime Prevention and Criminal Justice, was partly the result of proposals of the Austrian delegation in the CCPCJ.

As regards the illegal movement of chemical and biological materials, Austria has implemented the Chemical and Biological Weapons Conventions prohibiting, inter alia, the transfer of or the assistance in

manufacturing or acquiring biological and chemical weapons. In line with the obligations under these conventions, Austria has reviewed and, where necessary, adopted national measures to ensure the effective fulfilment of these obligations in order to exclude the use of chemical, biological and toxin weapons in terrorist or criminal activity by requiring approvals for activities with certain controlled toxic chemicals or precursors and licenses for the transfer of relevant biological and chemical materials. With regard to nuclear material, Austria fully implemented her obligations under the Convention on the Physical Protection of Nuclear Material with regard to the protection of nuclear material used for peaceful purposes in international transport and is actively participating in current international efforts to extend the scope of the Convention to domestic use, storage and transport.

The prohibition to handle nuclear, chemical and biological weapons is implemented by Section 177a of the Penal Code which provides for deprivation of liberty of up to 20 years or life imprisonment for unlawful handling of such materials.

Annex

Provisions for excluding or expelling persons as laid down in the Austrian Aliens Act (Fremdengesetz 1997)

Refusal of Entry or Residence Titles

Article 10

(1) Applications for entry or residence titles shall be refused if

1. a non-appealable residence and re-entry ban has been imposed on the applicant;

2. the residence title is to be granted immediately after the stay of an alien in Austria with a tourist or transit visa and if the application is made after entry into Austria;

3. the residence title shall not be granted after an alien has entered Austria without a visa (Articles 28 and/or 29), with the exception of seasonal workers (Article 9), third-state nationals with preferential status (Article 47) or dependants of Austrian nationals (Article 49).

4. an alien is unlawfully resident staying in the federal territory after having circumvented border controls;

5. an alien, without due cause, fails to appear before the record department (Article 96, paragraph 1, number 5) following a summons indicating the refusal consequences in the case of non-appearance, or fails to co-operate in the photographing, fingerprinting and investigative procedures;

(1) Entry or residence titles may be refused if there are justified reasons to assume that the alien could constitute a threat to the public interest (Article 8, paragraph 3, number2) especially in the event that

1. the alien applying for such a title is not covered by an all-risk health insurance or does not possess the means to assure his livelihood or – in the case of entry or time-limited residence titles, to pay for his departure from Austria;

2. the alien's stay could impose a financial burden on a local government authority, unless this burden would result from meeting a statutory claim of such an alien;

3. the alien's stay would present a threat to law and order;

4. the alien's stay would impair the relations between the Republic of Austria and another state;

5. there is reason to assume that the alien would not leave the federal territory after the expiry of his title without having been requested to do so.

Refusal of Visas

Article 11

(1) Applications for visas must be refused

1. if a contracting state[1] has indicated any ground for refusal or

2. because, as far as this appears to be the case a travel document which is not recognized by all contracting states has been submitted for obtaining an air transit, tourist or transit visa, or

[1] Contracting state means any state in which the Agreement of April 28, 1995 on Austria's accession to the Schengen Implementing Agreement, Federal Law Gazette III, No. 90/1997 has been enacted.

(1) in the event that a tourist visa in combination with an expired visa would allow an alien to stay in the contracting states for a period of more than three months following six months after the first entry.

Rejection at the border

Article 52 (1) Aliens shall be rejected at the frontier-crossing point (rejection) if their identity is in doubt, if they have not complied with the passport and visa requirements or if they present at a frontier-crossing point other than the one specified to them (Articles 6 and 42). Rejection shall not be admissible if it runs counter to a federal law, bilateral or multilateral agreements or international practice.

(2) Aliens shall be rejected at the frontier-crossing point

1. if they are subject to an enforceable residence ban and have not been granted a re-entry permit;

2. if a Contracting State has notified that their stay on the territory of the Contracting States would constitute a threat to public peace, law and national security unless they hold a residence title issued by a Contracting State or an entry title issued by Austria.

3. if, while they are entitled to enter the country without a visa for the purpose they have indicated, certain facts justify the assumption that

a) their stay on federal territory would constitute a threat to public peace, law and national security or to the relations between the Republic of Austria and another country;

b) they intend to take up gainful employment on federal territory in the absence of the requisite permits;

c) they will engage or participate in alien smuggling on federal territory;

4. if they have no domicile on federal territory and do not have the means necessary for their subsistence and departure;

5. if certain facts justify the assumption that they intend to commit premeditated fiscal offences other than minor violations of fiscal law or premeditated contraventions of foreign currency regulations.

Expulsion of aliens without residence title

Article 33

(1) Aliens can be expelled by administrative decision if they do not lawfully reside on federal territory.

(2) Aliens who neither hold a residence title nor are exempt from the requirement to obtain a visa and residence title nor enjoy the freedom of establishment (Article 30, paragraph 1) can be expelled by administrative decision

1. if they have been convicted by a penal court for a premeditated offence committed within one month of their entry, even if such conviction has not yet become final, or

2. if, within one month of their entry, they have been found flagrante delicto when committing a premeditated offence or been credibly accused of such offence immediately after commission, if said offence is subject to a substantial punishment and if the public prosecutor having jurisdiction has declared that he or she intends to report to the Federal Minister of Justice under Article 74 ARHG, or

3. if they violate the provisions governing prostitution within one month of their entry, or

4. if they are unable, within one month of their entry, to furnish proof that they are in possession of the necessary means for their subsistence, or

5. if they are found, within one month of their entry, by an organ of the Labour Inspectorates, the regional or provincial agencies of the Labour Market Service, to pursue an occupation which they ought not to have pursued under the Foreign Nationals Employment Act, or

6. if they have entered federal territory in violation of the provisions of Chapter Two or in circumvention of border controls and have been found to have done so within one month in the course of said unlawful residence and if their immediate departure is required in the interest of public order.

Expulsion of aliens holding a residence title

Article 34 *(1) Aliens who reside on federal territory under a residence title or in the course of proceedings for obtaining a subsequent residence title can be expelled by administrative decision*

1. if grounds for refusal running counter to the granting of the latest previous residence title occur or become known a posteriori, or

2. if grounds for refusal run counter to the granting of a subsequent residence title, or

3. if the residence title was granted to an alien who had claimed marital status even though he or she was not leading a family life as defined in Article 8 of the ECHR.

Residence ban

Article 36

(1) A residence ban can be imposed on an alien if certain facts suggest that such residence ban is justified since his or her presence would

1. constitute a threat to public peace, law and order or

2. run counter to other public interests referred to in Article 8, paragraph 2 ECHR.

(2) Certain facts as referred to in paragraph 1 above shall in particular apply if an alien

1. has been finally convicted by a domestic court and sentenced to unconditional imprisonment for more than three months, to partly remitted conditional imprisonment, remitted conditional imprisonment for more than six months, or if he or she has been finally convicted more than once for criminal offences due to the same harmful propensity;

2. has been finally sentenced more than once for an administrative offence under Article 99 paragraph 1 or 2 of the Road Traffic Act of 1960, Federal Law Gazette No. 159, under Article 366, paragraph 1, number 1 of the Trade Regulation Act of 1994, Federal Law Gazette No. 194 relative to a regulated trade subject to licensing, under Article 81 or 82 of the Law Enforcement Act (SGP), Federal Law Gazette No. 566/1991 or under Article 9 or 14 in combination with Article 19 of the Law of Assembly of 1953, Federal Law Gazette No. 233 or for a serious violation of said federal Act, of the Border Control Act, Federal Law Gazette No. 435/1996, of the Registration Act of 1991, Federal Law Gazette No. 9/1992 or of the Foreign Nationals Employment Act;

3. has been finally sentenced by a domestic authority for premeditated fiscal offences other than minor violations of fiscal law or for premeditated contraventions of foreign currency regulations;

4. has been finally sentenced in Austria of a serious offence against provisions governing prostitution or has been finally convicted in Austria or abroad for procurement;

5. has practised or participated in the smuggling of aliens for financial gain;

6. *has wrongly informed an Austrian authority or its organs on his or her person, his or her personal circumstances, the purpose or intended duration of his or her stay in order to obtain the right of entry or residence under Article 31, paragraphs 1 and 3;*

7. *is unable to give proof of being in possession of the necessary means for his or her subsistence, unless he or she has lawfully entered federal territory for the purpose of taking up work and has within the last year lawfully pursued gainful activity in Austria for more than six months;*

8. *is found by an organ of the Labour Inspectorate, the regional or provincial agencies of the Labour Market Service, to pursue an occupation which he or she ought not to have pursued under the Foreign Nationals Employment Act;*

9. *he or she has concluded marriage or claimed marital status in order to obtain a residence title or nation-wide work permit even though he or she was not leading a family life as defined in Article 8 of the ECHR, and if he or she has done so for a pecuniary consideration.*

Deportation

Article 56 *(1) Aliens against whom a residence ban or an expulsion order is enforceable can be ordered by the authority to leave the country (deportation) if*

1. *maintenance of public peace, order and security make it appear necessary to supervise their departure, or*

2. *they have failed to comply in time with their obligation to leave, or*

3. *certain facts suggest that they may not comply with their obligation to leave, or*

4. *they have re-entered federal territory in contravention of a residence ban.*